

REMARKS

Claims 1-20 are pending in the application, of which Claims 1, 10, 13, and 18 are independent. Claims have been rejected under 35 U.S.C. 112, first paragraph, under 35 U.S.C. 112, second paragraph, under 35 U.S.C. 102(b), and under 35 U.S.C. 103(a). Those rejections are respectfully traversed. Reconsideration is requested.

Rejections Under 35 U.S.C. 112, First Paragraph

Claims 1-20 have been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Office asserts that the claimed elements of *“transmitting the groomed inbound traffic to at least one destination other than the multiple transport switches”* and *“received at the at least one local switch from at least one source other than the multiple transport switches”* are not described in Applicants’ original disclosure, but provides no other evidence or reasoning in support of that assertion. Section 2163 of the MPEP states:

If applicant amends the claims and points out where and/or how the originally filed disclosure supports the amendment(s), and the examiner finds that the disclosure does not reasonably convey that the inventor had possession of the subject matter of the amendment at the time of the filing of the application, the examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims. (emphasis added)

In the previous response, Applicants amended independent Claims 1, 10, and 18 to include the above elements and provided citations to where in the original disclosure support for the amendments could be found. Thus, to reject the elements now as failing to comply with the written description requirement, the Office must provide evidence or reasoning as to why one skilled in the art would not recognize the claims as amended.

So as to not prolong prosecution, the following explains why the disclosure supports the above claim elements. Page 3, lines 7-14, of Applicants’ disclosure describes switches that may be present in a central office (Fig. 1, ref. num. 115), or hub, including transport switches and local, or protocol, switches. The cited portion describes that protocol switches, or local switches, can determine individual destinations of traffic elements and can forward those elements to

computers at the destinations. It is understood by one skilled in the art that central offices include desktop computers used by office personnel and that the destination computers, to which the local switches forward the traffic, can include such desktop computers. See also, page 7, lines 4-5, and Fig. 3 of Applicants disclosure, which describes that “[t]he protocol switches 221-224 extract the payloads from the signals and transmit in the respective protocols to other nodes (not shown).” These other nodes are destinations that are not shown in Fig. 3, such as local desktop computers in a Local Area Network, to and from which the local switches can transmit and receive network traffic. Applicants also note that there exists no *in haec verba* requirement that the specific language of a claim be found in the specification, but that claim elements may be supported through either express, implicit, or inherent disclosure (*see* section 2163 of the MPEP).

As such, Applicants respectfully submit that one skilled in the art would reasonably conclude that the Applicants had possession of the elements of “*transmitting the groomed inbound traffic to at least one destination other than the multiple transport switches*” and “*received at the at least one local switch from at least one source other than the multiple transport switches,*” as recited in independent Claims 1, 10, and 18, and, as such, comply with the written description requirement.

Dependent Claims 2-9, 11, 12, 14-17, 19, and 20 were rejected based on the rejections of independent Claims 1, 10, and 18; thus, Applicants submit that Claims 2-9, 11, 12, 14-17, 19, and 20 also comply with the written description requirement.

It should be noted that independent Claim 13 does not include the above elements and, therefore, should not be rejected under 35 U.S.C. 112, first paragraph. As such, Applicants respectfully request withdrawal of the rejections of Claims 1-20 under 35 U.S.C. 112, first paragraph.

Rejections Under 35 U.S.C. 112, Second Paragraph

Claims 1-12 and 14-20 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Office asserts that the claimed elements of “*at least one destination other than the multiple transport switches*” and “*received at the at least one local*

switch from at least one source other than the multiple transport switches,” as recited in independent Claims 1, 10, and 18, convey negative limitations by not specifying the destination or source in clear and concise terms and, thus, make the claims indefinite. It should be noted that the Office does not provide an articulated reasoning as to why the destination and source are not considered to be clear and concise.

Applicants respectfully submit that the above elements are not negative limitations because the claims positively recite that a local switch transmits inbound traffic to a destination and clarify that the particular destination is not one of the transport switches. The claims also similarly positively recite receiving the outbound traffic from a source and clarify that the source is not one of the transport switches. Thus, Applicants submit that the boundaries of the claims are definitely set forth and that the above elements are not negative limitations.

Further, even if the above elements were considered to be negative limitations, section 2173.05(i) of the MPEP states that “[t]he current view of the courts is that there is nothing inherently ambiguous or uncertain about a negative limitation.” The section also mentions that older cases, in contrast, were critical of negative limitations and refers to *In re Schechter*, 205 F.2d 185, (CCPA 1953). Subsequent case law, as well as the MPEP, has distinguished current law from *In re Schechter*. For example, the court in *Sienna v. CVS Corp.*, 2007 U.S. Dist. LEXIS 2, 23-24 (S.D.N.Y. Jan. 3, 2007) stated that “[t]here is no *per se* ban on the use of negative limitations, and *In re Schechter* does not suggest that one exists.” Both that case and the MPEP refer to the case of *In re Wakefield*, 422 F.2d 897 (C.C.P.A. 1970), in which negative limitations were found to be definite.

Dependent Claims 2-9, 11, 12, 14-17, 19, and 20 were rejected based on the rejections of independent Claims 1, 10, and 18; thus, Applicants submit that Claims 2-9, 11, 12, 14-17, 19, and 20 also comply with 35 U.S.C. 112, second paragraph. As such, Applicants respectfully request withdrawal of the rejections of Claims 1-12 and 14-20 under 35 U.S.C. 112, second paragraph.

Rejections Under 35 U.S.C. 102(b)

Claims 1-5, 7, 9-13, 15, and 17-20 have been rejected under 35 U.S.C. 102(b) as being anticipated by Kam *et al.* (U.S. Patent No. 6,754,208, hereinafter “Kam”).

With reference to Kam's Fig. 2, the Office asserts that the element of "*grooming inbound traffic at a first transport switch from among multiple transport switches for at least one local switch*" is disclosed by Kam's ingress stage 202 grooming traffic for Kam's mid-stage switches 204 (where the ingress stage 202 is considered to be a transport switch and the mid-stage switches 204 are considered to be local switches). The Office then asserts that the element of "*the at least one local switch transmitting the groomed inbound traffic to at least one destination other than the multiple transport switches*" is disclosed by Kam's directing of the groomed traffic from the ingress stage 202 to the mid-stage switches 204 (where the ingress stage 202 is then also considered to be a local switch and the mid-stage switches 204 are also considered to be destinations other than the transport switches). This cannot be the case, however, because the claims state that it is the local switches that transmit the traffic to another destination. If Kam's mid-stage switches 204 are relied upon as disclosing the local switches (which will then transmit the traffic to another destination), then the ingress stage 202 of Kam cannot also be relied upon as disclosing local switches that transmit the traffic to another destination.

Therefore, Kam does not disclose both "*grooming inbound traffic at a first transport switch from among multiple transport switches for at least one local switch*" and "*the at least one local switch transmitting the groomed inbound traffic to at least one destination other than the multiple transport switches,*" as claimed in independent Claims 1, 10, and 18. Similarly, Kam does not disclose "*grooming, at a second transport switch from among the multiple transport switches, outbound traffic received at the at least one local switch from at least one source other than the multiple transport switches,*" as also claimed in independent Claims 1, 10, and 18.

Dependent Claims 2-5, 7, 9, 11, 12, 15, 17, 19, and 20 depend from either Claims 1 or 10. Therefore, Applicants respectfully submit that dependent Claims 2-5, 7, 9, 11, 12, 15, 17, 19, and 20 are novel and nonobvious over the cited art for at least the same reasons as presented above for independent Claims 1 and 10. As such, Applicants respectfully request withdrawal of the rejections of Claims 1-5, 7, 9-12, 15, and 17-20 under 35 U.S.C. 102(b).

Regarding independent Claim 13, Kam does not disclose grooming "*inbound traffic into different forms of lower-bandwidth signals for multiple protocol switches that handle traffic of different protocols,*" as now claimed in amended Claim 13. Support for the amendments to

Claim 13 may be found in Applicants' specification on at least page 6, line 27 through page 7, line 5, and Fig. 3. As such, the rejection of Claim 13 under 35 U.S.C. 102(b) is believed to be overcome.

Rejections Under 35 U.S.C. 103(a)

Claims 6 and 14 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kam, and Claims 8 and 16 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kam in view of Chu *et al.* (U.S. Pat. No. 6,947,629, hereinafter "Chu").

Dependent Claims 6, 8, 14, and 16 depend from either independent Claims 1 or 10 and, thus, include the elements of either Claims 1 or 10 presented above as being novel and nonobvious over the cited art. Chu does not add to Kam the elements of Claims 1 and 10 presented above. Therefore, Applicants respectfully submit that dependent Claims 6, 8, 14, and 16 are novel and nonobvious over the cited art for at least the same reasons as presented above for independent Claims 1 and 10. As such, Applicants respectfully request withdrawal of the rejections of Claims 6, 8, 14, and 16 under 35 U.S.C. 103(a) and acceptance of Claims 1-20.

CONCLUSION

In view of the above amendments and remarks, it is believed that all now pending claims (Claims 1-20) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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